

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

MDL No. 2804

Blackfeet Tribe of the Blackfeet Indian Reservation v. Amerisourcebergen Drug Corporation, et. al.

Case No. 1:17-md-2804

Case No. 1:18-op-45749

Hon. Dan Aaron Polster

Defendant Smith's Food & Drug Centers, Inc.'s Motion for Leave to File Joinder in Motion to Dismiss First Amended Complaint

Defendant Smith's Food & Drug Centers, Inc. ("Smith's") respectfully moves this Court for leave to file the attached Joinder in the Motion to Dismiss Plaintiff's First Amended Complaint brought by Defendants CVS Pharmacy, Inc., CVS Indiana, L.L.C., Walmart Inc., Walgreen Co., and Walgreen Arizona Drug Co. ("the Moving Defendants") and Memorandum of Law. *See*, Smith's Joinder, attached hereto as "Exhibit A."

In support of this Motion for Leave, Smith's states that it first received notification of its addition as a named Defendant in the *Blackfeet Tribe* litigation in March of 2019, more than six months after the Moving Defendants filed their Motion to Dismiss pursuant to this Court's Orders. (Docs. 232, 770, 791). As a result, Smith's was unable to contribute to the Moving Defendants' briefing. Because the legal arguments raised by the Moving Defendants are equally applicable to Plaintiff's claims against Smith's, Smith's respectfully requests leave to join in their Motion to Dismiss and supporting briefs referenced above.

Smith's also seeks to call to the Court's attention a recent decision that was issued after the Moving Defendants' Motion to Dismiss was fully briefed but that provides further support

for the Moving Defendants' arguments. *See State of Delaware, ex rel. Kathleen Jennings v. Purdue Pharma L.P., et al.*, No. CVN18C01223MMJCCD, 2019 WL 446382 (Del. Super. Ct. Feb. 4, 2019). Additionally, this Court has made clear that plaintiffs should amend their complaints "to remove claims against defendants who should not be named." (*See, e.g.*, Doc. No. 739, at 1) (quotations omitted); (*see also* Doc. No. 397) (ordering the production of ARCOS data for entire United States to better help MDL proceed based on facts and "not conjecture or speculation"). In light of this order, Smith's requests that it be given leave to join in the Moving Defendants' Motion to Dismiss in order to give Plaintiff the opportunity to review the facts and dismiss Smith's from this action.

Pursuant to Sections 2.g., 2.j. and 2.k. of Case Management Order One (Doc. 232), Smith's does not waive and expressly preserves its right to raise any defenses not addressed in the Moving Defendants' briefing, and to file an individual motion to dismiss in the future on any grounds.

SMITH'S FOOD & DRUG CENTERS, INC.

By Counsel

/s/ Ronda L. Harvey

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Ronda L. Harvey

Counsel for Smith's Food & Drug Centers, Inc.

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